IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

CRL.A.No. 551 of 1999

C.C.NO.9/1998 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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APPELLANT/ACCUSED:

T. KUMARAN, FORMER JAILOR,
CENTRAL PRISON, VIYYUR, TRICHUR.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKUKLAM

BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/12/2006, ALONG WITH CRL.APPEAL NO.45 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl. Appeal Nos. 551 of 1999 and 45 of 2000

Dated this the 20th day of December, 2006

Judgment

Appellant in these cases were charged for offences punishable under sections 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. Crl. Appeal No.551 of 1999 was filed against conviction and sentence dated 3.8.1999 in C.C. No.9 of 1998 on the file of the Court of the Enquiry Commissioner and Special Judge, Thrissur. Two allegations were raised against him in that case. First allegation was that he, while working as a public servant in his capacity as Deputy Jailer in the Central Prison at Viyyoor from 19.5.1998 to 10.9.1993, has, by abusing his official position as a public servant, committed criminal misconduct y demanding illegal gratification from PW2 Azeez, Convict No.7738 at Central Prison, Viyyoor during 1992 as a motive for giving him simple work in the prison and accepted cheque for Rs.500/- from his brother PW1 which was presented in the Federal Bank Main Branch, Thrissur and got credited in his S.B. account. Second allegation was that, similarly, he demanded Rs.1,000/- from Convict No.7739 at

Central Prison, Viyyoor and accepted it from his brother PW4 for giving light work. The court below found that the allegation that he demanded illegal gratification of Rs.1,000/- for giving light work was found not proved beyond reasonable doubt and he was acquitted. With regard to the acceptance of Rs.500/- from PW1 for giving light work to his brother, I note that PW1 became hostile and he deposed that there was no demand for giving illegal gratification. Accused has advanced money as loan for treatment and when that was demanded back it was paid back by cheque. PW2 in the earlier examination has also stated the similar version even though the fact that Rs.500/- was accepted by cheque from PW2 brother of PW1 is accepted. Evidence of PW1 is in consonance with the defence of accused and it is a probable version. Since PW1 has become hostile and there was contradiction from the evidence of PW2, I am of opinion that appellant is entitled to get the benefit of doubt and conviction and sentence of the appellant/accused in the above case is set aside by giving benefit of doubt. Therefore, Crl.A. No.551 of 1999 is allowed and the appellant/accused is acquitted.

2. In Crl. Appeal No.45 of 2000, the allegation was also similar. While working as public servant in his capacity as Deputy Jailer in the Central Prison from 15.9.1990 to 10.9.1993 by abusing his official position as a public servant he committed criminal misconduct by demanding illegal gratification from PW5 T.V.Viswanathan, Convict No.7021 at Central Prison, Viyyoor during the year 1991 and accepted demand draft for Rs.2,000/- from his step son PW4 Narayanan who was working at Saudi Arabia. Allegedly, the amount was demanded from Viswanathan for giving him light work. After receiving the demand draft, the accused presented the same in the Federal Bank Ltd., Main Branch, Thrissur and got the amount credited to S.B. A/c No.8214 on 11.3.1991, the account maintained by the accused and thereby obtained undue pecuniary advantage to the tune of Rs.2,000/- and thereby committed the offence punishable under section 7 and 13 (1) (d) read with section 13 (2) of the P.C. Act, 1988. The fact that he accepted demand draft for Rs.2,000/- and the above amount was credited in his account is admitted. Ext.P3 is the demand draft and it is also clear from Ext.P6 ledger folio and Ext.P7 pay-in-

slip of Federal Bank that the above amount was accepted by the above accused and credited to his account. Ext.P5 was a complaint. In Ext.P5 complaint, it is stated that he was admitted in the Central Prison, Viyyoor on 9.11.1990 and he was given light work from 11.11.1990 onwards by way of teaching the illiterate convicts and it is his case that at that time onwards, he was paying money to the accused for the above favour. He also deposed that the accused was demanding money from other prisoners for giving light work. He understood that unless the amount is paid, he will be given hard work and he was paying the amount because of his physical condition. It is also submitted by him that he has paid the amount several times and on 11.3.1991 the amount was paid by demand draft which was obtained from his step son PW4. It is contended by the counsel for the accused that he was given light work from 11.11.1990 onwards and there was no necessity to give bribe on 11.3.1991 and, therefore, the amount given is not as a reward. On going through the complaint and evidence, I am unable to accept the above contention. It has come out in evidence that money was demanded several times and was paid, but, on

11.3.1991 it was given by demand draft. According to him, he was told several times that unless the amount is paid light work will be changed. Evidence of PW5 is fully corroborated by PW4 and other evidence established the fact that the demand draft for Rs.2,000/- was accepted from an inmate of the prison. Unless he gives a reasonable explanation why it was accepted, section 20 will come into play. Section 20 of the Prevention of Corruption Act provides for a presumption when public servant accepts money other than legal remuneration. The appellant was not entitled to get any amount from the inmates of the jail or from his relatives. His explanation was that PW5 had a case in another court and at his request for meeting some expenses with regard to that case, the demand draft was accepted from PW4 on behalf of PW5 (convict). The above explanation is totally unsatisfactory as PW4 could have spent the amount for contesting the case directly and there was no necessity to give the accused an amount of Rs.2,000/-, that too, by demand draft. Here, section 20 is clearly applicable and no valid defence has been made out. I am of the opinion that the charges alleged against him was

proved beyond reasonable doubt and I fully agree with the reasoning of the court below. Since I am agreeing with the reasoning of the court below, I am not repeating on evaluation of the evidence. I confirm the conviction passed on the accused.

3. Considering the fact that the appellant was hailing from a schedule caste family and considering the amount involved and also of the fact that he has to face the departmental enquiry, I am of opinion that the sentence can be reduced. Therefore, I reduce/modify the sentence as follows:

The accused/appellant is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.25,000/- and in default of payment of fine to undergo imprisonment for another six months in respect of offence punishable under section 7 of the Prevention of the Prevention of Corruption Act. In respect of offence punishable under section 13 (1) (d) read with section 13 (2) of P.C. Act, accused is directed to undergo rigorous imprisonment for one year. Substantive sentence of imprisonment shall run concurrently. He is also entitled to the right of set off.

In the result, Crl. Appeal No.45 of 2000 is disposed of confirming the conviction, but, reducing the sentence and Crl. Appeal No.551 of 1999 is allowed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL Nos.551/99
and 45/2000

Judgment

Dated:20th December, 2006